

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670  
Chapter 11

**DECLARATION OF ENSERCO ENERGY, LLC IN SUPPORT OF  
CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED  
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Tom Godbold, pursuant to 28 U.S.C. § 1746, state as follows:

**Introduction**

1. This Declaration is submitted in support of confirmation of the *Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [Docket No. 1495] (the "Plan").<sup>1</sup>

2. I am an Executive Vice President of Enserco Energy, LLC ("Enserco"), headquartered at 8847 West Sam Houston Parkway North, Houston, Texas 77040. I am authorized to make this declaration on Enserco's behalf.

3. All facts set forth herein are based on my personal knowledge without waiving any attorney-client privilege, on information supplied to me by others within the Enserco organization, upon my review of relevant documents, or on my opinion based upon my experience and knowledge of Enserco's operations. If I were called to testify, I could and would testify competently to the facts set forth herein.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan and/or the Revised First Amended Disclosure Statement for the Trustee's Plan of Liquidations Dated July 15, 2015 [D.E. 1497] (the "Disclosure Statement").

### **Relevant Background**

4. On July 6, 2013, an unmanned eastbound train operated by Montréal Maine & Atlantic Railway Ltd., the above-captioned debtor (“MMA” or the “Debtor”) and/or MMA Canada, derailed in Lac- Mégantic, Quebec, Canada (the “Derailment”).

5. Enserco is included in the definition of “Released Parties” under the Plan and accordingly will be the beneficiary of the Releases and Injunctions contained in the Plan if confirmed.

### **The Plan Releases and Injunctions**

#### **A. MMA and Enserco Share an Identity of Interest with Respect to the Claims Covered by the Releases and Injunctions**

6. Enserco is presently a defendant in three lawsuits in federal court alleging claims related to the Derailment, one pending in the District of Maine and two others originally filed in Texas state court and later removed to federal court. Enserco is one of many defendants named in those suits.

7. Enserco may have claims against MMA for, *inter alia*, contribution. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions they contain in favor of Enserco and its affiliates, Enserco intends to pursue its claims against the MMA estate.

8. In addition, Enserco may have claims against various other contributing parties for, *inter alia*, contribution and indemnity arising from the Derailment. In turn, such contributing parties may have claims against the MMA estate for, *inter alia*, contribution and indemnity arising from the Derailment.

#### **B. Enserco Has Contributed Substantial Assets to the MMA and MMA Canada Estates**

9. Enserco engaged in substantial settlement negotiations with Robert J. Keach, trustee for the Debtor’s Chapter 11 Case (the “Trustee”). After several weeks of good faith,

arm's-length negotiation, Enserco agreed to contribute to the settlement fund formulated by the Trustee for satisfaction of Claims against the Debtor, subject to the terms and conditions of the Plan Support and Settlement Agreement (the "Settlement Agreement"), which terms and conditions include the requirement that the Releases and Injunctions become effective.

10. The Settlement Agreement will enable the multiple parties to largely avoid the expense and delay of protracted litigation arising out of the Derailment. That being said, Enserco believes it has strong legal and factual defenses to all claims relating to the Derailment, and denies that it has any liability.

11. It is therefore highly unlikely that MMA's Derailment creditors would be able to realize through litigation the significant value that will be contributed by and on behalf of Enserco to the MMA estate pursuant to the Settlement Agreement, and certainly would not be able to realize any recovery whatsoever from Enserco without incurring the delay, expense, and risks of litigation. Under these circumstances, I believe to the best of my knowledge, information, and belief that Enserco's total settlement contribution to the MMA estate is "substantial."

**C. The Releases and Injunction are Essential to the Success of the Plan**

12. In exchange for its settlement contribution, the Settlement Agreement requires Enserco to receive global releases and injunctions protecting it from any and all claims by anyone that was related in any way to MMA or the Derailment. The global releases and injunctions required under the Enserco Settlement Agreement are to be achieved through confirmation of a plan in MMA's bankruptcy case.

13. Enserco negotiated and entered into the Settlement Agreement on the condition that any settlement was a final settlement of all MMA and Derailment-related liability—not only that of Enserco, but also any potential liability of related parties, including Enserco's direct

and indirect affiliates, and their present and former officers, directors, agents, and employees. Without this condition, Enserco would not have agreed to make its significant contribution to the MMA estate.

14. Enserco would not have settled with the Trustee if not protected from (a) further third party claims brought by the Derailment victims and (b) any and all contribution, indemnity and other claims relating in any way to the Derailment. A settlement that did not include Enserco's corporate affiliates, including their officers, directors, agents and employees, could leave Enserco related entities and individuals at risk for future suits, in the event that there is a subset of possible claims as to which the statute of limitations has not run. Enserco would not have settled under such circumstances. Thus, the third party releases and injunction were critical to achieving the proposed settlement, which will not be effective if the Plan is not confirmed with the Releases and Injunctions.

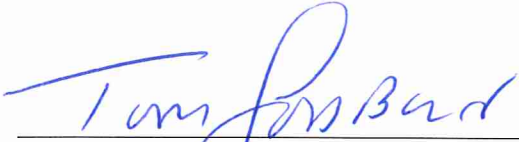
15. In light of Enserco's strong and complete defenses to liability, it is unlikely that MMA's Derailment creditors would be able to recover any amounts whatsoever from Enserco if the Plan were not confirmed and the Releases and Injunctions contained therein were not made effective.

16. Finally, I, on behalf of Enserco, support confirmation of the Plan.

*[signature follows]*

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: September 21, 2015

  
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Tom Godbold, Enserco Energy, LLC